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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 DEANDRE SIMMONS,
15 Defendant.
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Case No.: 14cr2074-LAB

**ORDER DENYING
CERTIFICATE OF
APPEALABILITY**

17 The Ninth Circuit has remanded this case for limited purpose of granting or
18 denying a certificate of appealability.

19 Defendant Deandre Simmons pled guilty to conspiracy to commit sex
20 trafficking of a minor in violation of 18 U.S.C. § 1594 and was sentenced to 68
21 months' imprisonment, followed by ten years of supervised release. Over three
22 years later, he filed a § 2255 motion arguing that the ten-year period of supervised
23 release is unauthorized under 18 U.S.C. § 3583.

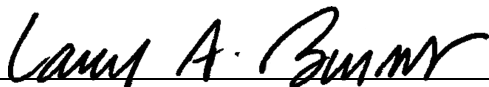
24 His motion is time-barred by over two years. He blamed his trial counsel for
25 delays in filing his motion. But the reasons he gave had nothing to do with his
26 lengthy delay. He knew what period of supervised release had been imposed as
27 soon as he was sentenced, and he identifies no extraordinary factor that kept him
28 from filing a motion within the limitations period. He is not entitled to tolling.

1 Simmons' claim also fails on the merits, for reasons set forth in the Court's
2 order of August 2, 2018. A ten-year term of supervised release does not violate
3 the statute. See 18 U.S.C. § 3583(k) (authorizing imposition of supervised release
4 for a period of between five years and life).

5 A certificate of appealability is **DENIED**. See *Miller-El v. Cockrell*, 537 U.S.
6 322, 327 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

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8 **IT IS SO ORDERED.**

9 Dated: September 13, 2018

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12 Hon. Larry Alan Burns
13 United States District Judge
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